

Marijuana Law and Policy

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For my entire family, all of whom have shared wisdom in various ways about various aspects of law, policy and practice in this arena.

—Douglas A. Berman

For my father, Leonard Kreit, whose interest in the subject matter may not have always been, strictly speaking, legal.

—Alex Kreit

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Introduction

It is difficult to overstate the impact of, or the controversy surrounding, the so-called “war on drugs” on modern American criminal justice systems over the past half-century. The criminalization of marijuana and its enforcement have arguably been the most impactful and controversial of any modern drug prohibitions. And long-standing controversies and concerns over marijuana prohibition have, in recent years, morphed into a remarkable array of fast-moving legal and policy reforms: over the last quarter-century since California first legalized medical marijuana, and especially in the last decade as numerous jurisdictions have legalized recreational marijuana, marijuana policy and practice has become the most dynamic of legal reform stories in all of American law.

Marijuana criminalization has long had dramatic impacts on constitutional criminal law and procedure, and every actor in the criminal justice system has long had to confront the social and racial consequences of (spotty) enforcement of criminal prohibitions surrounding this widely used drug. Modern new laws authorizing medical and recreational use of marijuana have now required an array of public health and regulatory actors to address an array of novel legal and social issues, while the wisdom and morality of any forms of marijuana prohibition remain hotly contested. But the value of understanding and teaching modern marijuana law extends beyond the policymakers and lawyers who might be interested in working directly in criminal justice and public health fields.

General Pedagogical Value and Specific Value to Students

Teaching marijuana law and policy has broad pedagogical value as a way of introducing students to broader societal issues and their intersection with the justice system and the modern administrative state. The early chapters of this text particularly highlight the history and impact of drug prohibitions and regulations while also encouraging students to reflect on what makes marijuana a distinctive drug that may (or may not) justify distinctive treatment legally and practically. Marijuana law and policy also provides an important opportunity to address and explore race and poverty issues in the classroom to show how legal doctrine and individual outcomes of criminal justice encounters are often shaped by these factors.

The area of marijuana law and policy is incredibly complex, continuously evolving, and always the subject of attention in the press and popular culture. Consequently, this field provides students an opportunity to follow dynamic legal reforms

in real-time while also engaging in sophisticated analysis and thinking with respect to a myriad of doctrinal fields, including business law, employment law, health law, intellectual property law, criminal law, constitutional law, sentencing policy, and others. Marijuana law and policy allows students to revisit concepts and questions covered in their first-year core courses and address them in holistic fashion. Because of the complexity and the number of legal doctrines it touches, marijuana law and policy lends itself well to a capstone course design, giving students an opportunity to apply what they have learned throughout their legal education.

The marijuana and broader drug field presents an ever-evolving legal environment where federal, state and local laws and regulations are not always in agreement. Excitement is common among students when taking their marijuana law course, in part because of how changing laws bring new light to classic legal issues. By grappling with new legal questions related to the emerging marijuana industry or new approaches to law enforcement, students are able to better understand the intersection of complex legal doctrines that can seem abstract or opaque.

The law school curriculum is filled with abstract concepts that can be hard to grasp without practical application. Course materials that seem removed from the practice of law lead some students to feel a gap between education received in a classroom and real-world applications. The area of marijuana law, as well as related drug law and policy aspects, provides a bridge between law school teachings and the practice of law by presenting practical and understandable application for complex legal questions. Students often feel familiar with the marijuana industry and the legal questions facing the field, which in turn makes it easier to apply what they have learned in the classroom to these problems.

The ultimate goal of nearly all law students is to secure a job upon graduation. And while grades are important, academic achievement should be accompanied by networking with professionals in the area of law students want to enter. Because of the novelty of the marijuana industry, and because of drug law's complex regulatory structure, courses in this space foster a setting to host a number of legal and government professionals to discuss a specific aspect of the industry or regulatory environment. This gives students an excellent opportunity to engage with professionals and grow their networks.

The marijuana industry is growing at an incredible rate, with more and more states (as well as nations throughout the world) creating medical and adult-use marijuana programs. Because of the relative novelty of this industry and its complicated regulatory environment, students who are familiar with various marijuana laws have special career opportunities in a dynamic and interesting field. Additionally, because of the newness of this area, recent graduates may have special advancement opportunities in law firms that are short on people familiar with this industry.

Students often seek to make a difference in the communities around them and the area of drug law and policy offers great opportunities. Policy debates are robust and enduring for marijuana law in particular and drug law generally, offering numerous

ways for students to be active participants in impactful policy advocacy. As states grapple with how to best regulate an emerging industry and how to address past harms of the war on drugs, students can be directly involved in seeking to change existing policies to achieve a more equitable and less harmful system for all.

Drug law and policy courses, and especially marijuana law courses, offer law schools a great opportunity to engage alumni by bringing them back to campus as guest speakers or for events in this area (including Continuing Legal Education courses). Because law is an evolving field of study, law schools strive to keep their curriculum current. With respect to legal marijuana businesses, marijuana law is a new area of practice, yet clearly one that is growing, and law schools should consider incorporating cannabis law into their curriculum to maintain up-to-date course offerings. (In addition, given the specialized nature of marijuana law, it is an area that is well-suited for being taught by adjunct professors.)

Chapter Overviews

This book provides an overview of the law and policy of marijuana prohibition and reform. Chapter 1 introduces the drug marijuana and its use and offers a range of perspectives on what other substances are comparable for legal and regulatory purposes. Chapter 2 introduces some of the key policy questions related to drug prohibition in the United States. Chapter 3 moves from policy to legal history and modern doctrines that have developed in light of a long history of prohibition and modern reforms. Chapter 4 addresses doctrines surrounding, and issues presented by, marijuana's criminalization. Chapter 5 explores the legal, policy, and practice issues raised by medical marijuana reforms in states. Chapter 6 turns to the legal, policy, and practice issues raised by recreational marijuana reforms in states. And Chapter 7 focuses on the myriad issues resulting from the conflict between federal and state marijuana laws.

